

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218844

DATE: November 26, 1985

MATTER OF: Starflight, Inc.

DIGEST: A "Deferred Service Requested" annotation on each of several Government Bills of Lading (GBL) satisfied an air carrier's Tender No. 17 requirement for application of relatively low deferred service rates. The carrier, however, applied higher rates published in Tender No. 14 applicable to regular air service allegedly because ambiguities in the GBL caused it to conclude that the shipper really did not desire deferred service. The General Services Administration's determination that deferred service rates (Tender No. 17) were applicable is sustained. The precise deferred service annotation on the GBL's required by Tender No. 17 was strong evidence of the shipper's intention to procure deferred service. If the carrier was confused by the shipper's actions it had a duty to clarify the shipper's intent.

Starflight, Inc., a certified air charter and air freight carrier, asks the Comptroller General, pursuant to 31 U.S.C. § 3726 (1982), to review action taken by the General Services Administration in the exercise of the agency's transportation audit responsibilities. The General Services Administration, based on a technical rate determination that Starflight collected overcharges on bills relating to three Government shipments,^{1/} caused the overcharge amounts to be deducted from monies due the carrier on other bills.

We sustain the General Services Administration's audit action.

^{1/} Starflight's request and the General Services Administration's report relate to three Government Bills of Lading, S-4683092, S-4683107, and S-4683109. Subsequently, the carrier asked for review of action taken by the General Services Administration on Government Bill of Lading S-4683624. On the representation that it is identical to the other three, our decision applies, as well, to it.

Facts

The dispute involves several small shipments Star-flight picked up in October 1983 and February 1984 at the Army Ammunition Plant, McAlester, Oklahoma, which were consigned to different installations. The shipments, consisting of special fireworks (class B explosives), were tendered to the carrier on Government Bills of Lading which contained the annotation "DEFERRED SERVICE REQUESTED," in the "Marks" block and the annotation "STFF 0018" in the "Tariff" block.

A "Deferred Service Requested" annotation on a Government Bill of Lading satisfies a requirement in Uniform Rate Tender No. 17. Tender No. 17 applies to requests for a particular type of air service, referred to as deferred service. The distinguishing feature of this service appears to be that the carrier reserves the right to defer pickup of shipments for up to 72 hours after being notified of a shipment's availability. The notation "STFF 0018" on the bills of lading refers to Tender No. 18, which offers lower rates for air/truck service. However, the lower air/truck service rates were not applied because the bills did not contain an annotation "Air/Truck Service Requested," as specifically required by note 4 of Tender No. 18.

The carrier indicates that it doubts that the Government had any intention of requesting "deferred" service, despite the "deferred service" annotation, because Tender No. 18, which was referred to on the bills of lading, offers lower rates than the rates offered by Tender No. 17 for deferred service. Also, the carrier alleges that oral requests for air/truck service were made by the shipper when the carrier was called to pick up the shipments.

The carrier billed and was paid charges derived from its Tender No. 14, which applies to regular air service. While the record is not entirely clear it appears that, notwithstanding any doubts as to the shipper's intent, the carrier actually provided deferred service--rather than the less expensive air/truck service it alleges was orally requested or the higher cost regular air service for which it billed under Tender No. 14.

B-218844

In its audit the General Services Administration applied the rates in Tender No. 17 on the theory that the Government Bill of Lading notations, "Deferred Service Requested," satisfied the prerequisite for applicability required by note 3 of that tender. Note 3 reads:

"These rates apply only when Bill of Lading is annotated: 'Deferred Service Requested.'"

The General Services Administration contends that Tender No. 14 does not apply because the bills here contain requests for deferred service, and Tender No. 14 expressly states that:

"This Tender is being offered for shipments that do not meet the requirements of Deferred Service or Weapons Service."

As further support for its position, the General Services Administration refers to another case involving conflicting annotations on the face of the Government Bills of Lading. Starflight, Inc., B-213733, July 23, 1984. The General Services Administration points out that in that case--which involved a conflict between a "Deferred Service Requested" annotation and a commodity description of palletized explosives, an item expressly excluded by the deferred-service tender--we held the carrier was bound by the lower deferred-service rates on the premise that the Army intended deferred service and the carrier neglected its duty to inquire to resolve the ambiguity on the Government Bill of Lading before it performed more expensive, emergency air service.

Discussion

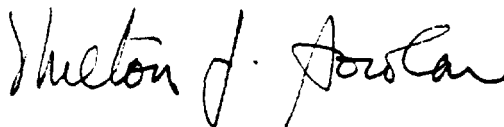
The carrier has the burden of establishing the validity of its claim. See Starflight, Inc., B-210740, September 27, 1983. The contract of carriage under which an air carrier transports goods includes the terms of the bill of lading and the applicable tariff or tender, including its rules, and it is settled that ambiguities in the contractual terms are to be resolved against the carrier, which is responsible for the document, and in favor of the shipper. Eastern Airlines, Inc., 55 Comp. Gen. 958 (1976).

B-218844

It is our opinion that Starflight has not established the validity of its claim. The Government Bill of Lading annotations, "Deferred Service Requested," strongly indicate that the intent of the Government was to procure deferred air service and should have served to put the carrier on notice in that regard. While the reference to Tender No. 18 in the tariff block could have caused the carrier some confusion, if it was unsure as to the type of service it was to perform, it had the obligation of clarifying that with the shipper in advance. Starflight, Inc., B-213773, supra, at 3-4.

We have held that the insertion of a tender number on a bill of lading, while providing some indication of the parties' intent, is not conclusive as to the agreement and is not necessarily determinative of the Government's obligations at law. American Farm Lines, B-200939, May 29, 1981. Thus, in this case the mere reference in the bill of lading tariff block to Tender No. 18 is not sufficient to overcome the clear annotation that deferred service was requested.

Accordingly, we agree that Tender No. 17, which applies to deferred service, is applicable, and on that basis we sustain the General Services Administration's audit action.

for 
Comptroller General
of the United States